

(ii) *Business financial condition.* This criterion will be used to provide a financial picture of a firm at a specific point in time in comparison to other concerns in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals. In evaluating a concern's financial condition, SBA's consideration will include, but not be limited to, the following factors: business assets, revenues, pre-tax profit, working capital and net worth of the concern, including the value of the investments in the concern held by the individual claiming disadvantaged status.

(iii) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. In making the evaluation, SBA shall consider the concern's access to credit and capital, including, but not limited to, the following factors: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; and bonding capability.

(b) *Economic disadvantage for the 8(d) Subcontracting Program, Small Disadvantaged Business Set-Asides, Small Disadvantaged Business Evaluation Preferences and for any other Federal procurement programs requiring SBA's determination of disadvantaged status.* (1) For purposes of the section 8(d) Subcontracting Program and other programs requiring SBA's determination of disadvantaged status, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and whose diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for the section 8(d) Subcontracting program, Small Disadvantaged Business set-asides and Small Disadvantaged Business Evaluation preferences, SBA will consider the factors set forth in paragraph (a) of

this section but will apply standards to each factor that are less restrictive than those applied when determining economic disadvantage for purposes of the 8(a) program. This approach corresponds to the Congressional intent that partial or complete achievement of a concern's 8(a) program business development goals should not necessarily preclude its participation in other Federal procurement programs for concerns owned and controlled by socially and economically disadvantaged individuals.

(2) An individual whose personal net worth exceeds \$750,000 as calculated pursuant to paragraph (a)(2)(i) of this section, will not be considered economically disadvantaged for purposes of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or any Federal procurement program which uses section 8(d) for its definition of economic disadvantage.

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 34902, Aug. 27, 1990]

§ 124.107 Potential for success.

Except for tribally-owned applicant concerns which must meet the requirements of § 124.112(c)(6), SBA will approve a concern for Program Participation only when it finds that the applicant concern possesses reasonable prospects for success in competing in the private sector and has been in business in its primary industry classification for two full years, unless a waiver for the two-year in business requirement is granted pursuant to paragraph (b) of this section.

(a) Unless a waiver is granted pursuant to paragraph (b) of this section, an applicant concern must demonstrate that it has been in business in the primary industry classification in which it seeks 8(a) certification for two full years prior to the date of its 8(a) application by submitting income tax returns showing revenues for each of the two previous years.

(b) The requirement that an applicant concern be in business for two full years may be waived, and the concern shall be considered to have demonstrated reasonable prospects for success, if each of the five conditions set forth in paragraph (b)(1) of this section are met.

(1) The two-year in business requirement may be waived if—

(i) The individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

(ii) The prospective Program Participant has demonstrated technical experience to carry out its business plan with a substantial likelihood for success;

(iii) The prospective Program Participant has adequate capital to sustain its operations and carry out its business plan;

(iv) The prospective Program Participant has a record of successful performance on contracts from governmental and/or nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

(v) The prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

(2) In order to be eligible for a waiver of the two-year in business requirement, an applicant concern that has been in business for less than two years must indicate in its application that it seeks a waiver, must provide information on governmental and nongovernmental contracts in progress and completed (including letters of reference) to establish successful contract performance, and must demonstrate how it otherwise meets the five conditions for waiver.

(3) SBA shall consider an applicant's performance on both government and private sector contracts if the applicant has performed contracts in both arenas. In such a case, an applicant's performance on both types of contracts will be reviewed to determine whether the firm has an overall successful performance record. If, however, the applicant has performed only government contracts or only private sector contracts, the applicant's performance on those contracts alone will be reviewed to determine whether the applicant possesses a record of successful performance.

(c) In determining whether a concern has the potential for success, SBA will look at a number of factors including, but not limited to, the technical and managerial experience and competency of the individual(s) upon whom eligibility is based, the financial capacity of the applicant concern and the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) certification. SBA will examine each of these factors to determine whether the otherwise eligible applicant concern has the potential to successfully perform subcontracts awarded under the 8(a) program and to meet the business development objectives and goals of the program.

(d) An applicant concern shall not be denied admission into the program due solely to a determination that specific contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 33896, Aug. 20, 1990; 59 FR 12814, Mar. 18, 1994]

§ 124.108 Additional 8(a) program eligibility requirements.

(a) *Individual character review.* If, during the processing of an application, adverse information is obtained from the 8(a) program applicant or a credible source regarding possible criminal conduct by an applicant concern or any of its principals, no further action will be taken on the application until SBA's Inspector General has evaluated that information and has advised the AA/MSB&COD of his or her findings. The AA/MSB&COD will consider those findings when evaluating the application.

(b) *Standards of conduct.* The SBA Standards of Conduct regulations, 13